

REMARKS**Status of the Claims**

After the amendment herein, claims 1 – 13, 18 – 20, and 22-27 are pending.

Claims 1 - 22 were rejected.

Claims 1, 2, 4, 5, 10, 11, 12, 13, 19, and 20 are amended herein.

Claims 14 - 17 and 21 are canceled.

Claims 23 – 27 are newly added.

Claims 1, 11, 12, 13, 18, and 23 are independent claims.

Rejection Under 35 U.S.C. § 103(a)

Claims 1, 2, 7, 8, 11, 12, and 15-22 were rejected under 35 U.S.C. 103 as obvious over Gerrard (U.S. Patent No. 5,435,295) in view of WEBSTER'S II Riverside University Dictionary (1984). The Office asserts that Gerrard discloses a fireplace grate comprising a frame 1 including a plurality of grate members 5 and cross members 10 11, a base 2, and an upper frame/cage member 3, having a second plurality of grate members 19 20 and cross members 23 24, wherein the grate members define a compartment/cavity to hold a firelog 34 (see area defined by support members 10 11, and support bars 23 24, and Figs. 2, 4). The Office further asserts that support members fully support logs placed thereon and direct contact is prevented between the firelog and the ceramic logs placed on top of the horizontal support bars and (see Fig. 4). The Office also asserts support bars 23 24, support members 10 11, and fibre logs 31 32 33, create a substantially enclosed compartment as defined in the applicants figures and specification, in particular Figs. 4A-B and 5A-B.

The applicant submits amended claims that recite distinguishing structure and relative locations of the platform and compartment of the fireplace grate. Grate members and cross members define a platform and a compartment disposed below the platform; the grate members have first portions lying in a first plane to form the platform and second portions extending below the platform to form the compartment. A supporting member also extends along and further defines the compartment. Such a fireplace grate prevents direct contact between a firelog held in the compartment and wood or ceramic logs positioned on the platform. In this manner, the applicant respectfully traverses the rejection and submits that the claimed fireplace grate is distinguishable from and allowable over the wire rack of Gerrard.

The application teaches a fireplace grate comprising a frame 102 that includes a base 110 formed of non-moveable grate members 112 and non-moveable cross member 114 that define a front portion (i.e., supporting platform) 120 and a rear portion (i.e., supporting platform) 140 for holding logs. In one embodiment, the grate members and cross members form a U-shaped or V-shaped portion (i.e., compartment) 130 between the front portion and the rear portion, for holding a firelog. See specification page 6, line 9 – page 7, line 18. Specifically, as illustrated, the grate members include first portion lying in a first plane and a shaped portion so that, when linked by the cross members, a platform and a compartment disposed below a platform are formed. The cooperation of the shaped portion of the grate members linked by the cross members forms sides of a V-shaped compartment or sides and bottom of a U-shaped compartment. The specification also teaches a supporting member extending longitudinally in the compartment to further support a log held in the compartment. By way of the amended claims, the applicant recites with particularity the structure that substantially encloses a firelog placed in the compartment. In addition, the amended claims recite the compartment as being located below the platform.

The Office relies on both the Gerrard base 2 and upper frame 3 to assert that the claimed compartment is obvious in light of a compartment formed by the Gerrard support members 10 11 and support bars 23 24. However, the claimed fireplace grate distinguishes between a base 110 and an upper cage member 160 or pivotal ceramic logs 24 that form the frame 102. Independent claim 1, initially addressed, is directed solely to the lower portion of the grate (i.e., base) 110 depicted in the figures. The applicant respectfully submits that, subject to a more analogous comparison, the Gerrard base 2 is distinguishable from the base 110 of the instant application, and thus, that claim 1 is patentable over the cited reference.

In comparison to Gerrard, the applicant's claimed invention is further distinguished in that the grate members have first portions lying in a first plane that form the platform and second or shaped portions that extend below the platform to form the compartment. This structural arrangement serves to isolate a firelog or starter material in the compartment from a wood or ceramic log on the platform. Gerrard fails to disclose or suggest this structural arrangement. The Gerrard "compartment" is not formed by grate members having shaped portions that extend below first portions of the grate members that lying in a first plane and form a platform. Also, in sharp contrast to claim 1, the area identified by the Office as the compartment in Gerrard is not

disposed below the platform on which the logs to be burned are positioned. Accordingly, the applicant respectfully submits that the claimed invention is distinguishable from the cited Gerrard reference.

Gerrard also fails to provide the structure or functionality provided by the compartment of the claimed invention, which permits combustible logs to be placed in the compartment or on the platform for burning. Gerrard teaches combustible logs are placed on the base. Wood logs can not logically be placed on the upper support frame of Gerrard because, if placed there, a host of problems arise: the arrangement would be too tall for most conventional fireplaces; ceramic logs may crack due to excessive heat when placed on wood logs or when wood logs fall on the ceramic logs; combustion pops from wood logs could dislodge proximately positioned ceramic logs when both are on the upper frame; and wood logs will fall from the upper frame as they are consumed and reduce in size. All of these create the unsafe conditions prevented by the compartment of the claimed invention which may also include a supporting member extending along the compartment to further support a firelog placed in the compartment through the burn cycle as the log burns and reduces in size. Thus, the wire rack of Gerard fails to teach or suggest both the separation and protection of a firelog from a wood log and a structure that supports a firelog as provided by the claimed fireplace grate.

Gerrard also teaches away from the claimed invention. Gerrard clearly teaches that a firelog is placed on the base of the grate and additional support members may be added to the base to support a second firelog or firewood. See col. 2, ln. 21. Moreover, Gerrard indicates that the base alone can be designed as a regular fireplace grate to accommodate paper wrapped firelogs and fire wood. See col. 3, ln. 32. Thus, all combustible logs are place on a single plane as in conventional fireplace grate; however, this arrangement of firelogs and wood logs creates the unsafe conditions that the claimed fireplace grate prevents. That is, Gerrard permits the direct placement of a firelog in combination with wood logs on the base of a fireplace grate with no protection for the firelog from natural wood log pops, fireplace tools or the fall/crush of logs. Thus, Gerrard fails to even recognize the unsafe condition that the claimed fireplace grate acts to prevent.

Gerrard is markedly different from the claimed fireplace grate which provides a base with a platform and a compartment disposed below to hold a firelog on a different plane from another combustible log. For safety and aesthetic reasons, a fireplace grate must support a burning

firelog to prevent the firelog from breaking apart and releasing its stored energy in an uncontrolled manner. Claim 1 is directed to such a fireplace grate having a shaped base forming a platform and a substantially enclosed compartment depending therefrom. Claim 1 recites a fireplace grate comprising a frame including a plurality of non-moveable grate members and a plurality of non-moveable cross members, the non-moveable grate members and non-moveable cross members defining a platform and a compartment disposed below the platform, the grate members having first portions lying in a first plane to form the platform and second portions extending below the platform to form the compartment, the frame further comprising a supporting member extending along the compartment. The claimed fireplace grate allows firelogs to be substantially enclosed in the compartment and out of direct contact with wood logs on the platform while being supported throughout the burn cycle.

Also, additional firelogs may be added to the compartment without moving the positioned wood logs, providing another level of safety and comfort. In contrast, for access to the area where firelogs are to be positioned for burning, Gerrard requires that the upper cage member be hinged and then moved during operation (i.e., while the fire is burning). This is a tricky and dangerous operation when the fireplace is in use, since ceramic logs on the frame are heated.

Lastly, the applicant notes with particularity that Gerrard fails to teach or suggest a supporting member extending longitudinally across the bottom of the compartment to support the underside of firelog in the compartment. The supporting member prevents the firelog from falling through the grate members as the firelog loses rigidity and begins to fall apart, preventing flare-up. The Office has failed to indicate an corresponding element in the cited reference that would render claims directed to this supporting member obvious. Accordingly, the applicant respectfully submits that Gerrard fails to disclose or suggest each and every limitation of independent claim 1 and thus, that claim is patentable over the Gerrard. Therefore, the applicant respectfully requests withdrawal of the rejection and allowance of claim 1.

Claims 2, 7, 8, and 18 depend directly and indirectly from claim 1 and thus include all of the limitations of claim 1. The applicant reiterates that claim 1 is patentable over the cited art for the reasons stated above, specifically the failure of the cited art to teach each and every limitation of the independent claims. Accordingly, dependent claims 2, 7, 8, and 18 are believed patentable based on such dependency and further limitation within each claim.

Independent claims 11, 12, and 19 recites the disclosed invention in alternative terms. With respect to patentability, each claim recites a fireplace grate including, in part, a base formed by a plurality of non-moveable grate members, a plurality of non-moveable cross members, and a supporting member, the grate members having a first portion extending in a first plane and a shaped portion extending below the first plane, the grate members connected by the cross members to define a platform and a compartment disposed below the platform, the supporting member extending along the bottom of the compartment. Therefore, for the reasons stated in detail above, the applicant submits that these independent claims are patentable over Gerrard. Gerrard fails to disclose or suggest a platform for logs and a compartment for a firelog depending from the platform, both the platform and compartment formed by cross members and grate members that have a first portion extending in a first place and a shaped portion extending below the first plane. Accordingly, the applicant respectfully requests withdrawal of the rejection of and allowance of these independent claims. Based on claim dependency, the applicant also submits that claims 20 and 22 are also patentable over the cited reference.

Claims 3, 4, 13, and 14 are rejected under 35 U.S.C. 103 as obvious over Gerrard in view of Kutchera (U.S. Patent No. 2,519,482). Claim 5 is rejected as obvious over Gerrard in view of Thompson (U.S. Patent No. 4,360,001). Claim 6 is rejected as obvious over Gerrard in view of Dotson et al. (U.S. Patent No. 4,692,168). Claim 9 is rejected as obvious over Gerrard in view of Fischer (U.S. Patent No. 4,838,781) and Kutchera. Claim 10 is rejected as obvious over Gerrard in view of Betenbaugh (U.S. Patent No. 4,257,392).

Claims 3, 4, 5, 6, 9, and 10 depend from and include all of the limitations of base claim 1. Accordingly, without at this time individually addressing the secondary reference for each rejection, which is relied on for the secondary teaching, the applicant reiterates the remarks above concerning the base claim and respectfully submits that claims 3, 4, 5, 6, 9, and 10 are patentable based on claim dependency and any further patentable limitation contained within each claim.

With respect to independent claim 13, Kutchera is relied on by the Office merely for the disclosure of a fireplace grate with hinged sections. Amended independent claim 13 recites the disclosed fireplace grate in alternative terms and includes recitation that the grate members have a first portion extending in a first place and a shaped portion extending below the first plane, the grate members connected by cross members to define a platform and a compartment disposed

below the platform, and a supporting member extending along the bottom of the compartment. Accordingly, for the reasons stated above, the applicant respectfully submits that claim 13 is patentable and requests withdrawal of the rejection.

As explain throughout this Amendment and Response, Gerrard fails to disclose or suggest a fireplace grate with a platform and a compartment disposed below the compartment formed from cross members and grate members having have a first portion extending in a first place and a shaped portion extending below the first plane. Similarly, the secondary references, which are relied on for other disclosure, fail to disclose these features. Accordingly, the applicant respectfully submits that the claims are not obvious in light of the cited references since, individually or in combination, the cited references fail to disclose or suggest all of the features of applicant's claimed invention. The applicant respectfully requests withdrawal of these rejections and allowance of all claims.

Other Amendments

Claims 2, 4, 5 are amended to correct grammatical inconsistencies. Claim 10 is amended to recite the fireplace grate positively in terms of structure instead reciting a structural effect on the workpiece. Claims 20 and 22 are amended to recite proper claim dependency. Claims 20 and 22 recite "the cavity", "the firelog", and "the starter material", terms which are first introduced in claim 19.

Canceled Claims

Claims 14 – 17 and 21 are canceled, the subject matter of these claims being incorporated into their respective base claim.

New Claims

Claims 23 - 27 are added by this amendment to better cover various aspects of the disclosed invention. These claims add no new matter to the application; support for all claims is found throughout the written description and the drawings.

Claims 23, 24, and 25 recite that the shaped portion of the grate member is U-shaped or V-shaped. Specific support for such a claim is found in the specification at page 7, line 3 – 14 and Figures 1-2. Accordingly, no new matter is added. In addition, claims 23, 24, and 25

depend from claims 19, 11, and 12 respectively and thus include all of the limitations of their base claim. Therefore, applicant submits that these claims are patentable based on that claim dependency and request allowance.

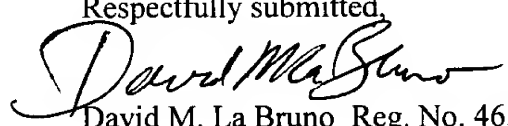
Claim 26 recites the disclosed invention previously claimed in alternative terms and is believed patentable over the cited references for the same reasons noted above with respect to the other independent claims. Accordingly the applicant reiterates those remarks and requests allowance of claim 26. Claim 27 depends from and include all of the limitations of claim 26. Thus, the applicant requests allowance of this claim on the basis of its claim dependency.

Conclusion

Based on the foregoing remarks, it is respectfully submitted that the claims as currently pending are patentable and in condition for allowance. Reconsideration of the application and withdrawal of all rejections are respectfully requested.. In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

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Respectfully submitted,

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